The Torrington Company, a subsidiary of the Ingersoll Rand Company *and* Metal Products Workers Union Local 1645, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW. Case 34–CA–4566

December 23, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT AND RAUDABAUGH

On April 25, 1991, Administrative Law Judge Joel P. Biblowitz issued the attached decision. The General Counsel and the Union filed exceptions and supporting briefs. The Respondent filed cross-exceptions with a supporting brief and an answering brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions to the extent described below and to adopt the recommended Order.

The issue before us is whether the Respondent violated Section 8(a)(5) and (1) by unilaterally changing the health insurance plan of nonbargaining unit employees in a way that affected spouses of those employees who were in the bargaining unit represented by the Charging Party Union. We agree with the judge that the change was not a mandatory subject of bargaining and that therefore the complaint should be dismissed. As explained in section III, below, however, our reasons for concluding that the change was not a mandatory subject are somewhat different from those of the judge.

I. RELEVANT FACTUAL FINDINGS

Prior to January 1, 1990, the Respondent made available to its unit and nonunit employees a health insurance benefit plan that paid 80 percent of the employee's reasonable medical costs. The plan also permitted internal coordination of benefits between spouses who were both employed by the Respondent. For example, 80 percent of a married female employee's medical expenses were paid through her direct participation in the plan. This was referred to as ''primary coverage.'' With internal coordination of benefits, the employee's husband—who himself was an employee participant in the plan—could apply to have the remaining 20 percent of his wife's medical expenses paid through his coverage by claiming her as a dependent. This two-step process saved the couple almost the entire cost of the wife's medical expenses.[1]

In 1989,[2] during negotiations for a new collective-bargaining agreement, the Respondent proposed a new health insurance plan that it said its parent, Ingersoll Rand, was implementing at all subsidiaries. Although the information furnished concerning the new plan mentioned that internal coordination of benefits would be eliminated, according to the Union's witnesses, the elimination itself was not discussed. The Union rejected the proposed plan because the Respondent could not provide sufficient information about other aspects of it and, on September 9, the parties executed a memorandum of agreement, stating:

> The [Respondent] agrees to continue all existing insurance coverage and to pay increased cost required to maintain these benefits for the term of the agreement subject to the [institution of a ''Healthline'' program and increase in sickness and accident benefits].[3]

In addition the newly negotiated collective-bargaining agreement, executed the same day, states:

> The [Respondent] will continue to purchase from an insurance carrier of its selection for its employees and their dependents the following insurance benefits with Coordination of Benefits and Internal Coordination of Benefits.[4]

In October, the Union became aware that the Respondent intended to implement the new plan, without internal coordination of benefits, for all *nonunit* employees. Although the Union repeatedly inquired about the effective date of the plan and the impact of the elimination of benefit coordination on unit employees, the Respondent either was unable or unwilling to answer the Union's questions. On December 28, the Respondent informed the Union that the new plan for nonunit employees would become effective on January 1, 1990.

As a result of the Respondent's implementation of the new plan, nonunit employees could not apply for secondary coverage of the unpaid balance of their

[1] The husband's reimbursement of his wife's medical expenses was referred to as ''secondary coverage.'' In reality, secondary coverage paid nearly, but not quite all, the remainder of the spouse's medical expenses. It should be noted that the judge misstated the way this process worked in that he erroneously concluded that the employees who received treatment filed for secondary as well as primary coverage. Each spouse, depending on his or her role as patient or nonpatient, filed for the portion of coverage that was applicable to his or her situation.

[2] Except where otherwise indicated, all dates are in 1989.

[3] No party contends that the ''Healthline'' program, which required precertification of hospital confinements, and the increase in sickness and accident benefits have any bearing on internal coordination of benefits.

[4] The collective-bargaining agreement goes on to specify benefits, such as hospitalization, surgical, maternity, and laboratory services.

spouses' medical expenses, whether their spouses were nonunit or unit employees. Thus, nonunit-unit couples received only 80 percent coverage of the unit spouse's medical treatment and could not apply for reimbursement of the remaining 20 percent.[5]

II. THE PARTIES' POSITIONS AND THE JUDGE'S DECISION

The General Counsel and the Union have asserted that the internal coordination of benefits between unit and nonunit employees is a mandatory subject of bargaining, and that the Respondent was required to bargain about its elimination of the benefit for nonunit employees because the elimination substantially changed the benefits of unit employees who are married to nonunit employees. In particular, the Union contends that, even though the change was made in the health plan of nonunit employees, it ''vitally affects'' all bargaining unit spouses of those employees, and is therefore a mandatory subject under the test set out in *Chemical Workers Local 1 v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 179 (1971). The General Counsel agrees that the ''vitally affects'' test is met here, but argues principally that the change should be viewed as one made in the benefits of the unit members themselves. The judge agreed that *Pittsburgh Plate Glass*, supra, applied, but concluded, in reliance on *United Technologies Corp.*, 274 NLRB 1069 (1985), that the ''vitally affects'' test was not met because the benefit coordination in the nonunit health plan provided only an ''indirect and remote'' benefit to the unit employees.[6]

III. ANALYSIS

We agree with the judge that the Respondent was not obligated to bargain about the elimination of internal coordination of benefits for nonunit employees. We do not rely, however, on the remoteness or indirectness of the effect on the financial interests of unit employees. We rely instead on the fact that the change in the medical plan for nonunit employees did not affect the ''terms and conditions of employment'' of the unit employees. In this regard, we note that the ''vitally affects'' test of *Chemical Workers Local 1 v. Pittsburgh Plate Glass Co.*, supra, was linked only to unit employees' ''terms and conditions of employment'' and not to their financial or other interests generally. Id. at 179. Obviously a unit spouse's interests may be affected by improvements or impairments of the wages and benefits of the nonunit spouse, but this does not mean that those wages and benefits are the terms and conditions under which both of them work.[7]

The Respondent eliminated internal benefits coordination only from the *nonunit* employees' new health plan. It was the nonunit employees' right to seek this coordinated benefits coverage, and theirs alone, that was foreclosed by the change. Although the elimination affected unit employees because the nonunit spouse of the unit spouse no longer received coordinated benefits, the increase in medical expenses flowed from the change in nonunit employment benefits rather then from any change in benefits available to unit employees, who were still entitled to secondary coverage of their nonunit spouses.[8] Because unit employees retained the right to apply for secondary coveage reimbursement of their nonunit or unit spouses' medical expenses, the Respondent's policies were consistent with its agreement to purchase health insurance for unit employees that permitted internal coordination of benefits. The Respondent had no obligation to bargain with the Union about changes in the terms and conditions of employment for employees who were not in the unit.[9] The fact that these changes had an impact on the overall financial concerns of the unit employees does not make them a bargainable subject.

Accordingly, we find that despite its incidental, adverse impact on unit employees, the elimination of internal coordination of benefits in the nonunit employ-

[5] Because of the retention of the existing coverage for unit employees, however, unit employees were permitted to apply for secondary coverage of the unpaid balance of their nonunit (or unit) spouses' medical expenses. The practical effect of the change was that while unit-unit couples could have all of their medical expenses paid no matter which spouse received treatment, nonunit-unit couples had all medical expenses paid only if the nonunit spouse was the one receiving treatment.

[6] In this connection, the judge noted that of the Respondent's approximately 1600 employees, the change in health plans adversely affected 20 unit employees.

[7] Given our theory of the case, we do not, like the judge, place any reliance on the small number of employees affected by the change. (See fn. 6 supra.) We also note that if the change in question did involve the employment terms and conditions of unit employees, the mere fact that only a small number were affected would not dictate a finding that the change was not a mandatory subject of bargaining. See *Van Dorn Plastics Machinery Co.*, 286 NLRB 1233, 1234 fn. 4 (1987).

[8] We find no merit in the Union's statement that, ''The Unit employee is disqualified from receiving coverage under the non-Unit plan because he is an employee of Respondent.'' As far as the record shows, no nonunit employee retained ''coordination of benefits'' coverage under the Respondent's medical benefits plan which could cover as a dependent a spouse otherwise covered by his or her own separate plan; and that is so regardless of the place of employment of the spouse of the nonunit employee. For the nonunit employee the absence of coordinated benefits coverage appears to be universal under the Respondent's nonunit employee medical plans. Accordingly, the unit employees' status as such had no apparent bearing on their exclusion from coordination of benefits coverage under the nonunit employees' medical benefits plan.

[9] The instant case is distinguishable from *Beitler-McKee Optical Co.*, 287 NLRB 1311, 1312 (1988), in which the Board found that the employer unlawfully unilaterally eliminated family coverage from the unit employees' existing health insurance plan, notwithstanding that all of the unit employees were single and did not use family coverage. There, the unilateral change was made in the unit employees' plan. In the instant case, the unilateral change was effected only in the plan made available to nonunit employees.

ees' health plan was not a mandatory subject of bargaining. The Respondent therefore had no duty to bargain with the Union before implementing the new plan for those nonunit employees.

ORDER

The National Labor Relations Board adopts the judge's recommended Order and orders that the complaint is dismissed.

Thomas W. Doerr, Esq., for the General Counsel.
Burton Kainen, Esq. (Segal, O'Connor, Schiff, Zangari & Kainen), for the Respondent.

DECISION

STATEMENT OF THE CASE

JOEL P. BIBLOWITZ, Administative Law Judge. This case was heard by me on January 30, 1991, in Hartford, Connecticut. The complaint, which issued on May 16, 1990,[1] and was based on an unfair labor practice charge filed on January 8 by Metal Products Workers Union Local 1645, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW (the Union), alleges that the Torrington Company, a subsidiary of the Ingersoll Rand Company (Respondent), violated Section 8(a)(1) and (5) of the Act by altering the health insurance benefits of its employees without previously affording the Union an opportunity to bargain about the subject.

On the entire record, including the briefs received from the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a Delaware corporation with its principal office located in Torrington, Connecticut (the facility), is engaged in the manufacture and nonretail sale of antifriction bearings. During the 12-month period ending April 30, Respondent sold and shipped from its facility products, goods, and materials valued in excess of $50,000 directly to points outside the State of Connecticut. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION STATUS

Respondent admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE FACTS

Respondent employs approximately 1600 employees at the facility; of these, about 1000 are salaried nonunit employees. The remaining 600 employees are represented by the Union. The Union has represented these employees since about 1950 and the most recent collective-bargaining agreement between the parties is effective for the period September 9, 1989, through September 12, 1992. Of the employees at the facility, there are 29 married couples where both are employed in the unit involved herein and there are 46 married couples employed at the facility where both are employed in nonunit positions. More important to the instant matter, there are 20 or 21 bargaining unit employees at the facility who have spouses at the facility employed in nonbargaining unit positions. This matter involves medical insurance coverage provided by Respondent to its employees—unit and nonunit. From, at least, January 1, 1986, to January 1, Respondent's medical insurance plans have contained internal coordination of benefit provisions; this means that if both spouses are employed by Respondent they can each take advantage of their own as well as their spouse's coverage to, hopefully, obtain 100-percent reimbursement for their medical expenses. As an example, a bargaining unit member whose wife is employed by Respondent in a nonbargaining unit position would file a claim with the primary carrier and (theoretically) receive reimbursement for 80 percent of his medical expenses. He would then file a secondary claim with his wife's coverage (pursuant to internal coordination of benefits) and would then receive the remaining 20 percent of his expenses.

Respondent made no change relevant herein to the health insurance benefits for its unit employees. However it did change its health insurance benefits for its nonunit employees, effective January 1, by terminating internal coordination of benefits. As a result of this change unit member spouses could no longer take advantage of coordination of benefits with their nonunit spouses. It works this way: commencing January 1, unit employees, after being reimbursed for 80 percent of their medical expenses by their primary carrier, can no longer file a secondary claim under the plan of their spouse, who is a nonunit employee. The opposite was not true, however. A nonunit employee, after being reimbursed by his primary coverage for 80 percent of his medical expenses, could still file a claim for secondary coverage under his spouse's health insurance policy pursuant to internal coordination of benefits, since it was not changed for the unit employees. This case is before me because of the 20 or 21 married couples who are employed by Respondent at the facility, one in a unit position and one in a nonunit position. It is only these individuals who were affected by the elimination of internal coordination of benefits, effective January 1, and only when the claim is by the unit member.[2] In fact, two of General Counsel's witnesses were unit employees who, after January 1, were no longer able to file for secondary coverage under the health insurance plan of their husbands, nonunit employees of Respondent; this resulted in an out-of-pocket loss to them of $200 to about $2000. The initial issue is whether Respondent was obligated to bargain with the Union prior to discontinuing the internal coordination of benefits provision for its nonunit employees, and if so, did Respondent satisfy this bargaining obligation.

Henry Fijalkowski, the shop chairman and vice president of the Union, testified that there were extensive discussions about health insurance during the 1989 negotiations and Respondent's chief spokesperson told him that they were going to put a new plan in effect for the nonunit employees and they would like to give the bargaining unit people the same

[1] Unless indicated otherwise, all dates referred to herein relate to the year 1990.

[2] Actually, the change also affects nonunit employees married to each other who can no longer take advantage of the spouse's coverage for secondary reimbursement, but that is not relevant herein.

plan. Fijalkowski testified that Respondent's representatives were uncertain about particulars of the new plan and could not answer some of his questions about the plan; during these discussions Respondent gave him a document which referred to the elimination of coordination of benefits, but he could not recall any specifics of the document or resulting discussions. The union representatives said that they would prefer to stay with their existing plan. The memorandum of agreement executed by the parties on September 9, 1989, states: ''The Company agrees to continue all existing insurance coverage.'' In addition, article 11.1 of the new agreement states:

> The Company will continue to purchase from an insurance carrier of its selection for its employees and their dependents the following insurance benefits with Coordination of Benefits provision and Internal Coordination of Benefits:

As Fijalkowski testified: ''The insurance benefits that we had would remain intact.'' Beginning in about October 1989 Respondent conducted meetings with its nonunit employees to explain the changes in its health insurance plan; the only change relevant herein is the elimination of internal coordination of benefits in the nonunit plan. When Fijalkowski learned of these changes, he informed Respondent's representatives that the Union objected to the elimination of internal coordination of benefits in the nonunit plan because of the effect it would have on his unit people who were married to nonunit employees. When Respondent made clear that this new plan would be instituted effective January 1, the Union filed a grievance on the subject in about October 1989; after the third step of the grievance, Respondent contended that the grievance should be determined by a named factfinder as provided in the contract for disputes involving insurance. The Union disagreed and demanded that it ought to follow the usual path of arbitration. The arbitration has been stalled as a result of this disagreement.

IV. ANALYSIS

The issue here is whether Respondent violated Section 8(a)(1) and (5) of the Act by discontinuing internal coordination of benefits in its health insurance plans for its nonunit employees. The first question is whether this was a subject that Respondent was obligated to bargain about with the Union; if it was, the final question is whether Respondent satisfied that obligation. I find that the answer to the first question is no and that it is therefore unnecessary to answer the second question.

Internal coordination of benefits was unchanged in the new agreement between Respondent and the Union; there was a change, however, for the nonunit employees in that they were given a new health insurance plan which, among other changes, eliminated internal coordination of benefits. Whereas this would appear to be beyond the Union's concern, the General Counsel alleges that the Union has the right to object, and Respondent was obligated to bargain on the subject prior to the elimination of this provision, because 20 or 21 of the Union's members are married to nonunit employees and, because of the elimination of internal coordination of benefits, lost the right to apply for, and collect under, their nonunit spouses' coverage for secondary reimbursement. It is not every change in conditions of employment that must first be bargained about; in *Chemical Workers Local 1 v. Pittsburgh Plate Glass Co*., 404 U.S. 157 (1971), the Supreme Court held that to be a mandatory subject of bargaining, the subject had to ''vitally affect'' the terms and conditions of their employment. In *United Technologies Corp*., 274 NLRB 1069, 1070 (1985), after referring to the Supreme Court's ''vitally affect'' standard, the Board stated:

> An indirect or incidental impact on unit employees is not sufficient to establish a matter as a mandatory subject. Rather, mandatory subjects include only those matters that materially or significantly affect unit employees' terms and conditions of employment.

In that case the employer had maintained a program for about 20 years under which it employed college-aged children of both its unit and nonunit employees on a temporary basis during the summer months. Although the union did not represent these summer employees, it demanded that the company bargain with it over this summer help program; the company refused to do so. In dismissing this allegation, the Board stated:

> we view the availability of temporary summer employment at the Respondent's facility as a benefit flowing solely to the nonunit employees hired under the program, not to their unit and nonunit employee-parents. Any ''benefit'' to the latter is at most indirect and remote.

I find that under *Pittsburgh Plate Glass*, supra, *United Technologies*, supra, and *Seattle First National Bank v. NLRB*, 444 F.2d 30 (9th Cir. 1971), Respondent was not obligated to bargain with the Union regarding elimination of internal coordination of benefits for the health insurance plan for its nonunit employees. The facts herein are very similar to those present in *United Technologies*, supra, where the Board found that the effect and benefit to the unit-parents was ''at most indirect and remote.'' The same is true here. Out of about 1600 employees at the facility, about 20 unit employees have lost their secondary coverage by the elimination of internal coordination of benefits for the nonunit employees at the facility. Without minimizing the additional out-of-pocket loss suffered by some of the Union's members, such as Poniatowski and Dragan, the change does not ''vitally affect'' the unit employees, nor does it ''materially or significantly'' affect their terms and conditions of employment. As stated in the brief of counsel for Respondent, if I were to accept General Counsel's position herein, Respondent could make no change in the terms and conditions of employment of its nonunit employees without first bargaining with the Union, since it would have some effect on the unit spouses.

I therefore recommend that the complaint be dismissed in its entirety.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent did not violate Section 8(a)(1) and (5) of the Act as alleged in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

ORDER

It having been found and concluded that Respondent has not engaged in the unfair labor practices alleged in the complaint, the complaint is dismissed in its entirety.

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.